SUPREME COURT OF THE UNITED STATES.

No. 290.

THE UNITED STATES, PLAINTIFFS,

vs.

RUFUS B. VASSAR.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

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1 SCHEDULE A.

Circuit court of the United States of America in and for the northern district of New York.

At a stated session of the circuit court of the United States of America, held in and for the northern district of New York, on the third Tuesday of October, in the year of our Lord one thousand eight hundred and sixty-three, before the honorable Samuel Nelson, judge of the said court, assigned to keep the peace of the said United States of America in and for the said district, and also to hear and determine divers felonies, misdemeanors, and other offences against the said United States of America, in the said district, committed Harris B. Howard, Peter Sheppard, Ezra R. Easterbrook, Sylvester Waterbury, Solomon Morris, Platt Carpenter, Ruben Dueren, William Ingram, Thomas Galvin, Wm. A. Dernek, Paul Springer, Schuyler Greenman, Jonathan Seaman, Joseph Fales, Columbus Sharp, Willard Wittsel, D. W. C. De Forrest, David Myers, Charles W. Way, David Phillips, jr., good and lawful men of the said district, then and there sworn and charged to inquire for the said United States of America, and for the body of said district, do, upon their oath, present

2 that Rufus B. Vassar, now or late of Albany, in the county of Albany, with force and arms, or, to wit, at Albany, in the county of Albany, in the said northern district of New York, and within the jurisdiction of this court, heretofore, to wit, on the fifth day of March, in the year of our Lord one thousand eight hundred and sixty-three, and on divers days and times between that day and the finding of this indictment, did, knowingly, feloniously, and unlawfully, exercise and carry on the trade or business of a lottery ticket dealer, and did sell, and offer to sell, lottery tickets and fractional parts thereof, and tokens, certificates, and devices, representing and intending to represent lottery tickets and fractional parts thereof, for the exercising and carrying on of which trade or business a license then was and is required, and without having taken out and without having a license therefor, according to the provisions of the act of the Congress of the United States, entitled "An act to provide internal revenue and to pay interest on the public debt," and the amendments thereof, against the statute of the United States of America in such case made and provided, and against the peace of the said United States of America and their dignity.

WILLIAM A. DART.
U. S. Att'y N. Dist. N. Y.

3 Circuit court of the United States of America in and for the northern district of New York.

RUFUS B. VASSAR
ads.
THE UNITED STATES OF AMERICA.

And now comes the above-named defendant in open court, and having heard the said indictment read, saith that the said the United States of America ought not further to impeach or prosecute him, the said defendant, touching or concerning the premises, whereof he is by the said indictment accused, because he says that the said indictment and the matters therein contained are not sufficient, in law, to compel him, the said defendant, to answer the same, and that no process upon the said indictment ought, by the law of the land, to be issued against him, the said defendant; and this he is ready to verify. Wherefore he prays judgment of the court here, and that he may be dismissed and discharged of the said indictment.

L. D. HOLSTEIN,
Attorney for Defendant.

4 Circuit court of the United States of America in and for the northern district of New York.

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And William A. Dart, district attorney of the United States for the northern district of New York, who prosecuted for the said the United States of America in this behalf, saith that the said indictment and matters therein contained, in manner and form as the same are above stated and set forth, are sufficient, in law, to compel the said Rufus B. Vassar to answer the same; and the said the United States of America is ready to verify, as the court here shall direct and award. Whereupon, inasmuch as the said Rufus B. Vassar hath not answered to the said indictment, nor hitherto in any manner denied the same, the said the United States of America pray judgment, and that the said Rufus B. Vassar may be convicted of the premises in the said indictment specified.

WILLIAM A. DART,
U. S. Attorney N. Dist. N. Y.

5 Circuit court of the United States of America in and for the northern district of New York.

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It is hereby stipulated, that upon and under the demurrer of the defendant interposed to the indictment in this case, the defendant may have the same benefit as if he had pleaded specially the consti-

tution and several laws of the State of New York on the subject of raffling and lottery, and had also pleaded specially that at the several times mentioned in the indictment he was a citizen of the said State, and exercising and carrying on this business therein.

WILLIAM A. DART,
U. S. Att'y.
L. D. HOLSTEIN,
Def't's Att'y.

6 UNITED STATES OF AMERICA,
Northern District of New York:

At a circuit court of the United States, begun and held at the city of Albany for the northern district of New York, on the 20th day of October, 1863.

Present, Hon. Samuel Nelson, circuit judge; Hon. Nathan K. Hall, district judge.

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This is an indictment against the defendant, charging him with having, at the city of Albany, in the State of New York, on the fifth day of March, 1863, knowingly exercised and carried on the trade or business of a lottery ticket dealer, and with having sold, and offered to sell, lottery tickets without having taken out and without having a license therefor, according to the provisions of the act of Congress, entitled "An act to provide internal revenue and to pay interest on the public debt," and the amendments thereof.

The defendant demurs to said indictment and the matters therein contained as not sufficient, in law, to compel him to answer the same.

7 The government joins in said demurrer, and it is stipulated, by and between the respective parties in writing, that the defendant may have the same benefit as if he had pleaded specially the constitution and several laws of the State of New Yoak on the subject of raffling and lotteries, and had also pleaded specially that at the several times mentioned in the indictment he was a citizen of the said State, and exercised and carried on his business therein.

The case coming on to be argued at this time, it occurred as a question whether the defendant could be legally convicted and punished under the said indictment and the acts of Congress therein referred to, for the offence of carrying on without license, under the said acts of Congress, the business mentioned and described in such indictment, while the said business was unlawful and wholly prohibited by the laws of the State of New York, and said defendant was a citizen of and resident therein, and while said business could not be carried on by the said defendant, as alleged in said indictment, without his being liable to indictment, conviction, and punishment, under the laws and statute of said State, for the criminal

offence of selling lottery tickets and carying on said business
8 in violation of such statutes of said State; on which question the opinion of the judges were opposed.

Whereupon, on motion of the United States, by their district attorney and counsel, that the point on which the disagrement has happened, may, during the term, be stated, under the direction of the judges, and certified under the seal of the court to the Supreme Court, to be finally decided, it is ordered that the foregoing state of the pleadings, &c., and the following statement, made under the direction of the judges, be certified, according to the request of the United States, by their attorney and counsel, and the law in that case made and provided, to wit, that the sale of lottery tickets and the carrying on of the business mentioned in the indictment, as therein stated, was then and there, under the constitution and laws of the State of New York, a criminal offence, and now is, and for the last ten years has been, a crime, punishable by indictment, fine, and imprisonment, under the statute of said State.

9 UNITED STATES OF AMERICA,
Northern Dist. New York:

I, Augustus A. Boyce, clerk of the circuit court for the northern district of New York, do hereby certify the foregoing to be a copy from the minutes.

Given under my hand and seal of office, at the city of Albany, on
[SEAL] the 30th day of October, in the year of our Lord one thousand eight hundred and sixty-three.

AUGUSTUS A. BOYCE, *Clerk.*

10 *To the Supreme Court of the United States:*

I, Augustus A. Boyce, clerk of the circuit court of the United States in and for northern district of New York, in 2d circuit, do hereby certify and return the above transcript of record on division of opinion between the judges of said court, made in above-entitled case.

Utica, Nov. 20, 1863.

The answer of—

AUGUSTUS A. BOYCE, *Clerk.*

Filed December 2, 1863.